IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CASE NO:L.P.A.No.610 of 2002

DATE OF DECISION:December 6, 2006

BHOOP SINGH

.....APPELLANT
through Mrs. Daya Chaudhary,
Advocate.

VERSUS

STATE OF HARYANA AND OTHERS.

.....RESPONDENTS
through Mr. Deepak Jindal,
A.A.G.,Haryana for
respondents No.1 to 3 and
Mr. R.S.Kundu, Advocte,
for respondent No.4.

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN, CHIEF JUSTICE
HON'BLE MR. JUSTICE S.S. NIJJAR.

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment?**

2. **To be referred to the Reporters or not?**

3. **Whether the judgment should be reported in the Digest?**

VIJENDER JAIN, CHIEF JUSTICE (ORAL)

Bhoop Singh had filed amended Civil Writ Petition No.8384 of 1999, challenging the order dated 22,05,1999 by which his services had been terminated. A prayer was also made to quash the order dated 16.04.1998 passed by this Court in Civil Writ Petition No.729 of 1996. C.W.P.No.729 of 196 had been filed by Sukhbir Singh respondent No.4 in the present Letters Patent Appeal. The writ petition filed by Sukhbir Singh was allowed, directions were issued to respondents to reconsider the claim

of sukhbir Singh for selection as Naib Tehsildar in the preferential category (II) of the dependents of Ex-Servicemen. It was also directed that in case Sukhbir Singh is selected and recommended for appointment then appropriate orders for appointing him within one month of the receipt of the recommendations from the Board be also issued. It was further directed that if it becomes necessary to dispense with the services of the less meritorious person then appropriate action be taken by giving notice and opportunity of hearing to the person likely to be effected adversely. This order was passed by the Division Bench on 16.04.1998. The respondents reconsider the claim of Sukhbir Singh, then passed an order dated 17.08.1998 again rejecting the candidature of Sukhbir Singh, to be considered in the category of reservation for dependents of Ex-Servicemen. Sukhbir Singh filed C.O.C.P.No.1082 of 1998. The C.O.C.P. was disposed of on 07.05.1999 as the statement has made by the Deputy Advocate General that Sukhbir Singh would now be recommended in terms of the Court directions dated 16.04.1998 and that he would be appointed within three weeks from today. A show cause notice was issued to the appellant on 18.05.1999. He submitted a detailed reply to the same on 21.05.1999. He mentioned specifically about the orders having been issued pursuant to the directions issued by this Court in C.W.P.No.729 of 1996. He had also pleaded that Sukhsbir Singh had played on the Court by not giving details about his agricultural land holdings and the respondents had rejected the claim forwarded by the appellant by passing a detailed order. The services of the appellant were, therefore, clearly terminated by order dated 22.05.1999 after observing the rules of natural justice. The appellant, therefore, challenged the aforesaid order by filing amended Civil Writ Petition No.8384 of 1999. The writ petition was, however, dismissed by the learned Single Judge by judgment dated

20.12.2001. Aggrieved by the aforesaid judgment, the appellant had filed the present Letters Patent appeal.

We have heard the learned counsel for the parties.

Mrs. Daya Chaudhary, learned counsel for the appellant has contended that respondent No.4 could not have been appointed to the post as the appellant was Ex-Serviceman and he ought to have been given preference for appointment over the other Ex-Servicemen. It was contended by her that already two brothers of respondent No.4 had availed the benefit of being appointed in the category of appointment and reservation in that regard to the deceased Ex-Servicemen who were killed in action. She relied upon the instructions of the respondent regarding reservation.

" (a) Reservation

The existing reservation in respect of civil posts for ex-servicemen should be utilized in the manner given below:-

(i) disabled ex-servicemen with disability between 20% to 50%.

(ii) upto two dependents of service personel killed/disabled beyond 50%.

(iii) other ex-servicemen.

Note: Disabled ex-servicemen will mean ex-servicemen who while serving in the Armed Forces of the Union, were disabled i operation against the enemy in disturbed areas.

Note: The dependents will include besides wife/widow dependent sons/daughters."

The said question was considered by the learned Single Judge as

there was an affidavit, which was filed by respondent No.4.

> "That the contents of para 16 (ii) are wrong and denied and not admitted. It is also made clear that Jai Bir Singh brother of the answering respondent is not in any employment throughout India either in Govt. or Private Co. and it is also made clear that Dharamvir Singh was not enrolled in army on compassionate ground but was recruited in open competition/competitive recruitment and now after discharge from army is working in Haryana Vidyut Parsaran Nigam as per his own category of Ex-Servicemen. And he had never got any benefit of his deceased father and also have no concern with family of answering respondent".

The following stand was taken by the respondent No.4 before the writ Court.

> " It is also wrong and denied and not admitted that two brothers of the answering respondent have taken benefit of dependent of ex-servicemen as per instructions dated 6.3.1972. As no one from the family of answering respondent has ever got any eligibility certificate from Zila Sainik Board and no such benefit in Civil employment neither can be claimed nor granted in absence of eligibility certificate, so that contentions raised by petitioner is wrong and baseless".

Even otherwise the order, the direction issued in the earlier writ petition No. 729 of 1996, which was filed by respondent No.4, admittedly, came to the notice of appellant when a show cause notice to terminate his services were issued to him. Having not taken any steps to get the remedy from the Court, which had issued the direction on the petition of respondent No.4, it is too late in the day for the appellant to raise this issue in this

appeal before us. The Division Bench of this Court in the writ petition filed earlier held as under:-

> "Before concluding, we consider it necessary to dispel the doubt which may have been created in the mind of the authorities on the issue of the petitioner's eligibility because of the apparently contradictory affidavits filed by the Board. It appears that after having appeared in the selection for recruitment as Naib Tehsildar, the petitioner got appointment as Clerk as he joined service without waiting for adjudication of his claim for appointment on the post of Naib Tehsildar. This, in our considered view, cannot deprive the petitioner of his right to be considered for appointment as a dependent of Ex-Servicemen on the basis of application submitted by him in pursuance of the advertisement dated 22.9.1993 because till the last date of submission of application, the petitioner had not joined service as Clerk. Moreover, on a perusal of the affidavit filed today by the Secretary of the Board, it becomes clear that no enquiry was made by the Board on the issue of eligibility of the petitioner to be considered for selection against the posts reserved for Ex-servicemen. Thus, the case of the petitioner deserves to be considered irrespective of the fact that after the completion of process of selection initiated by the Board in the year 1993, the petitioner joined service as Clerk".

Therefore, these directions became final and the same were not challenged by the appellant before any Forum. The argument of the learned counsel for the appellant that these directions were passed in writ petition where the appellant was not a party is no longer available to him.

Another contention raised before us by the counsel for the appellant is with regard to the fact that respondent No.4 had some agricultural income from the family holding. This argument of the appellant will not hold good as while disposing of the writ petition No.729 of 1996 filed by respondent No.4, the Division Bench relied on the observations made this Court whilst deciding in CWP No.13309 of 195 Rajpal Singh v. State of Haryana and others, decided on 05.12.1996 and the C.W.P.No.6325 of 1996 Naresh Chander and another v. State of Haryana and others, decided on 23.4.1997. While relying on Rajpal Singh's case, it was observed:-

> "We, therefore, allow the writ petition and direct the respondents to consider the case of the petitioner for appointment as Naib Tehsildar strictly in accordance with the reservation policy framed by the Government for Ex-Servicemen and their dependents. We also direct the respondents to consider the case of the petitioner according to order of priority indicated in the circular letter dated 6.3.1972. If it is found that the petitioner is entitled to be appointed under category No.(ii) then he should be given appointment as Naib Tehsildar. This exercise shall be completed within two months of the submission of a certified copy of this order. In case it becomes necessary to terminate service of one of the appointee in order to make room for the petitioner, then service of such appointee shall be terminated after giving notice and opportunity of hearing to him."

And to the similar effect, reliance was placed on Naresh Chander's case;

> "For the reasons mentioned above, the writ petition are allowed. The selection and appointment of respondents No. 4 to 7 are declared illegal and quashed. The Subordinate Services Selection Board is directed to redetermine the merit of Ex-Servicemen/Dependents of Ex-Servicemen and the appointing authority is directed to appoint the candidates falling in the category of Ex-Servicemen in accordance with the revised merit list."

The Division Bench also considered in paragraph 4 (iv):

> "That the annual income of Sukhbir Singh was Rs. 3000/- in 1992-1993 and it was further certified that there was no independent report available in that regard and it was difficult to ascertain the income of Sukhbir Singh in 1992-1993."

Therefore, the finding of the learned Single Judge cannot be faulted as learned Single Judge correctly held that respondent No.4 was to be considered and appointed against the reserved vacancy meant for Ex-Servicemen as per the policy instruction of the State Government under which the dependents of service personnels killed in action were to be given preference for appointment to above the State Service over the other Ex-Servicemen. From the extract re-produced it becomes clear that the Division Bench had earlier decided the matter on the basis that the income of Sukhbir Singh was Rs.3000/- in the year 1992-93. The appellant slept over the matter and that finding stares at the face of the appellant. Furthermore the appellant has not taken any steps to place before the writ

court or before this Court any material to show that the income of Sukhbir Singh was not what has been recorded by the writ Court in the petition filed by the Sukhbir Singh.

Therefore, we do not find any infirmity with the reasoning of the learned Single Judge and there is no merit in this appeal and the same is dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

December 6, 2006 **(S.S.NIJJAR)**
nt **JUDGE**